

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.126 OF 2006
IN
PAUPER PETITION NO.5 OF 2003

Shri Rameshchandra S. Porwal and ors. ...Petitioners

v/s

The State of Maharashtra and ors. ...Respondents

Mr G.V. Pandya for Petitioners.

Mr Charles D'Mello i/b Mr K.R. Sutrale for Respondents.

CORAM : **D.K. DESHMUKH J.**

DATE : **11TH JANUARY 2007.**

P.C.

:-

1. This notice of motion has been taken out by the petitioners in chamber summons No.68 of 2006 for restoration of the chamber summons which was dismissed for default by this Court. Chamber summons No.68 of 2006 was taken out challenging the order dated 19th April 2006 passed by the Additional Prothonotary and Sr. Master of this Court in pauper petition No.5 of 2003 and seeking a declaration that the petitioners are pauper. What is significant is that though the order of Additional Prothonotary and Sr. Master which is challenged by chamber summons shows that one Vijay Shivnarayan Porwal, who is son of the deceased was shown as a heir of the deceased in pauper petition, was permitted by the Additional Prothonotary and Sr. Master by order dated 23rd September 2005 to contest the pauper petition and pursuant to that order, the said Vijay Porwal contested the pauper petition, the said Vijay Porwal was not joined as a party to the chamber summons though a copy of the chamber summons was served on him. When the chamber summons appeared on board of the Court on 9th November 2006, the matter was called, none appeared for the petitioners and therefore, the matter was kept back. The matter was called again, again none

appeared for the petitioners, therefore, the chamber summons was dismissed for non-prosecution. In the affidavit filed in support of the motion, it is claimed that the petitioners in the chamber summons were present, they heard the matter when it was called out first, but they could not understand when the matter was called out second time and that is how the petitioners remained absent. So far as the absence of the lawyer is concerned, it is stated that he remained absent because he had two matters before the Division Bench. However, nothing is produced on record to show that the lawyer had really matter before the Division Bench. Except the words of the petitioners, there is nothing produced to show that the petitioners were present before the Court. Thus, I am not satisfied with the explanation given for non-appearance of the lawyer and the petitioners in Court. I do not find that there was any sufficient cause for the petitioners and their lawyer to remain absent. The second aspect that is to be seen is that the chamber summons itself is incomplete for non-joinder of necessary parties. Perusal of the pauper petition shows that in that petition, the name of Mr Vijay Porwal is disclosed as one of the legal heirs of the deceased. Perusal of the order of the Additional Prothonotary and Sr. Master shows that the Additional Prothonotary and Sr. Master had permitted the said Mr Vijay Porwal to contest the proceedings by order dated 23rd September

2005. That order has not been challenged by the petitioners and therefore, in chamber summons, the said Mr Vijay Porwal was a necessary party. Merely serving copy of the chamber summons on Mr Vijay Porwal will not cure the defect and therefore, in my opinion, no useful purpose will be served by restoring the chamber summons which appears to be bad for non-joinder of necessary party. Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.
